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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,114	10/15/2001	Richard H. Jones	PHB 34-221A	3750

24737 7590 12/06/2005

PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
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BRIARCLIFF MANOR, NY 10510

EXAMINER

NGUYEN, DAVID Q

ART UNIT PAPER NUMBER

2681

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/978,114

Applicant(s)

JONES ET AL.

Examiner

David Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

By

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 11/21/05 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the composition of a melody from calling signal including the message data and excluding the music data) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claims 20,23 and 25 recite: "an incoming message **excluding at least one of** a melody identification signal and a melody signal".

Yamashita clearly teaches or suggests "an incoming message **excluding at least one of** a melody identification signal and a melody signal" (see col. 4, line 50 to col. 5, line 15).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 20,23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamashita (US 6,070,053).

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Regarding claims 20 and 23, Yamashita discloses a communication device and a method of operating a communication device in alerting a user of the communication device of an incoming message, comprising a receiver operable to receive an incoming message excluding at least one of a melody identification signal and a melody signal (see col. 4, line 47 to col. 5, line 15); a processor operable to compose a melody corresponding to the incoming message subsequent to a reception of the incoming message (see col. 4, line 47 to col. 5, line 15).

Regarding claim 25, Yamashita discloses a communication device, comprising a receiver operable to receive an incoming message excluding at least one of a melody identification signal and a melody signal (see col. 4, line 47 to col. 5, line 15); and a processor operable to control display of the incoming message into a melody subsequent to a reception of the message by said receiver (see col. 4, line 47 to col. 5, line 15).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-22, 24, 26-29, 31-32 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita (US 6,070,053) in view of Morishima (US Patent Number 6075998).

Regarding claims 21-22; 24, 26-29, 31-32 and 34-35, Yamashita does not disclose wherein said processor is further operable to divide the incoming message into a plurality of fields to thereby compose the melody; the plurality of fields including a tempo field, a repetitive play field, and at least one note field; wherein the message is a numeric message; wherein the message is an alphanumeric message. However, Morishima discloses wherein said processor is further operable to divide the one of the numeric message, the alphanumeric message and the voicemail message into a plurality of fields to thereby compose the melody (see col. 6, lines 18-63; fig. 5) and the plurality of fields including a tempo field, a repetitive play field, and at least one note field (see col. 4, lines 1-61 and col. 5, lines 36-59); wherein the message is a numeric message (see col. 6, lines 18-63; and fig. 5); wherein the message is an alphanumeric message (see col. 6, lines 18-63; and fig. 5; 1<sup>st</sup> numeral data D1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Morishima to Yamashita in order to allow the sender to send message composed music by the sender.

4. Claims 30, 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita (US 6,070,053) in view of Morishima (US Patent Number 6075998) and further in view of Willner et al (US Patent Number 6064666).

Regarding claims 30, 33 and 36, the method and the communication device of Yamashita in view of Morishima is silent to disclose wherein the message is a voice mail message. However, Willner et al teach the message is a voice mail message (see col. 19, lines 43-62, converting a voice mail message to text). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of

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Willner et al to the method and the communication device of Yamashita in view of Morishima in order to allow the user to compose the melodic sound using voice mail message.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Q. Nguyen whose telephone number is 571-272-7844. The examiner can normally be reached on 8:30AM-5:30PM.

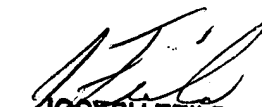
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOSEPH H. FEILD can be reached on (571)272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*DN*

David Nguyen

  
**JOSEPH FEILD**  
**SUPERVISORY PATENT EXAMINER**